

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

GIZACHEW WONDIE,

Defendant.

NO. CR18-315 RAJ

GOVERNMENT'S RESPONSE TO
UNSEALING REQUEST

(Filed Under Seal)

The government opposes the Defendant's request that this Court unseal the two referenced Orders in their entirety. Dkt Nos. 314 and 321. In the alternative, the government proposes entry of an order unsealing redacted versions of the Orders. This proposal is not offered to frustrate or undermine the public's interest in learning any aspect of this proceeding. Rather, it is offered to protect a compelling public interest: preserving the integrity of an open state homicide investigation.

A. Relevant Procedural History

Defendant's counsel initially sought government approval to release the sealed Orders to separate counsel who was presumably retained to represent the Defendant in another proceeding. It subsequently became clear that the initial request would be expanded to include unsealing the Orders in their entirety. In response, the government

1 advised counsel it would seek input from the King County Prosecuting Attorney's Office
 2 before responding to the request based on concerns that references in the Orders could
 3 potentially impact the ongoing state homicide investigation. King County Senior Deputy
 4 Prosecuting Attorney Scott O'Toole subsequently provided the government with redacted
 5 versions of the two Orders, proposing limited redactions. Copies of the redacted versions
 6 are attached hereto as Exhibits A (Dkt. No. 314, the *Franks* Order) and B (Dkt. No. 321,
 7 the probable cause Order).

8 The government forwarded the proposed redacted versions of both Orders to
 9 Defendant's counsel with the representation that it would not oppose entry of an order
 10 authorizing the filing of the redacted versions. Counsel advised the government that the
 11 redactions were unacceptable, and this motion followed.

12 **B. Legal Standard**

13 The First Amendment affords the press and the public a presumed right of access
 14 to court proceedings and documents. *See generally Press-Enterprise Co. v. Superior*
 15 *Court*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1985). Similarly, courts
 16 recognize that the public has a "common-law" right "to inspect and copy public records
 17 and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597, 98 S.Ct. 1306, 55
 18 L.Ed.2d 570 (1978). These presumed rights, however, are not absolute. They can be
 19 overcome by an overriding right or interest "based on findings that closure is essential to
 20 preserve higher values and is narrowly tailored to serve that interest." *Press Enterprise*, at
 21 510; *Nixon*, at 598. More importantly, for purposes of the Defendant's pending request to
 22 unseal the Orders in their entirety, the general presumption in favor of open judicial
 23 proceedings requires that the district court consider alternatives to closure, such as
 24 redaction. *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1097 (9th Cir. 2014).

25 **C. Argument**

26 The Defendant's argument rests almost entirely on repeated references to the need
 27 for transparency in judicial proceedings. As applied to this proceeding, however, he fails
 28

1 to articulate how redacting specific limited factual references to certain aspects of the
2 open state homicide investigation obscures the public's ability to understand and discern
3 this Court's analysis of the federal prosecution. The Defendant engaged in a robust
4 motions practice to secure dismissal of the charged drug and firearm offenses. He
5 succeeded. His objective was realized. The outstanding charges were dismissed with
6 prejudice. The proposed redactions—none of which are substantive, but merely obscure
7 the state investigation from which this case arose—will not deprive the public of the
8 Court's analysis in reaching its decisions.

9 The Defendant's argument seeking unsealing makes no mention of the ongoing
10 state homicide investigation and the public's corresponding interest in eliminating or
11 significantly reducing the risk of disclosing information that may compromise law
12 enforcement efforts. This omission, paired with rejection of the government's proposed
13 alternative of publishing redacted versions of the Orders, is telling.

14 The Defendant notes that limited references to the state investigation were
15 introduced by both parties in filed pleadings and during court proceedings. In most of
16 those instances, the references were inadvertent. Regardless of the scope, number, and
17 context, there is no authority supporting this waiver theory advanced by the Defendant.
18 The government undertook extensive efforts to limit public access to any information that
19 would compromise the state investigation, generally without any objection from the
20 defendant. As the Court is aware, attempts were made to anonymize references to
21 individuals and groups believed to be associated with the homicide investigation. The
22 overwhelming majority of substantive pleadings related to these two issues were filed
23 under seal. Extensive protective orders were entered restricting access to discovery. Each
24 of these steps were undertaken for the recognized purpose of protecting an open
25 investigation. That purpose remains valid today. It has not been waived.

26 To be clear, the limited redactions sought by the government on behalf of King
27 County are not being requested to diminish embarrassment, avoid recriminations, or
28 minimize exposure to further litigation. They are sought for the singular purpose of

1 preserving the integrity of an open homicide investigation. *See* Declarations of Senior
 2 Deputy Prosecuting Attorney Scott O'Toole and King County Sheriff's Office Detective
 3 John Free, attached as Exhibits C (O'Toole) and D (Free). Through the law enforcement
 4 efforts of county detectives and prosecutors, the public interest in identifying and
 5 prosecuting those responsible for the homicide is being advanced. Ex. C, at ¶ 9; Ex. D,
 6 at ¶ 7. Any step that could undermine these efforts should be denied, particularly when it
 7 serves no purpose.

8 In summary, the Defendant achieved his objective. The federal prosecution has
 9 been dismissed. Publication of the proposed redacted Orders does nothing to undermine
 10 this result. The minimal redactions do not deprive the public of the opportunity to access
 11 this Court's analysis. They do preserve the public's compelling interest in protecting
 12 public safety by reducing risks associated with disclosure of law enforcement sensitive
 13 information. The government respectfully requests that Defendant's motion to unseal the
 14 two Orders in their entirety be denied and that the redacted versions be substituted and
 15 entered on the public docket.

16 DATED this 16th day of September, 2021.

17
 18 Respectfully submitted:

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